

28

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO. 683 of 1989

Date of order 22.10.89

N.Dasarath

...

Applicant.

versus

The Director,
Central Research Institute for
Dry Land Agriculture (I.R.I.D.A.)
Santhoshnagar, Saidabad Post,
Hyderabad. and two others.

Respondents.

For Applicant: Shri .K.Nageshwara Reddy

For Respondents: Shri.N.Bhasker Rao

CORAM:

THE HON'BLE SHRI B.N.JAYASIMHA. VICE-CHAIRMAN

THE HON'BLE SHRI J.NARASIMHA MURTHY. MEMBER (JUDL)

(Judgment of the Bench delivered by Shri B.N.JAYASIMHA H.V.C.)

The applicant is a messenger in the Hayathnagar Research Farm. In this application he seeks quashing of the order dated 31-8-1989 by which he has been transferred to Gunegal Research Farm at Ibrahimpatnam.

2. The applicant states that he was appointed as^a messenger S.S.G.(1) on 13-10-1978. Since his joining duty he has been discharging his duties without any blemish. He belongs to a Backward Community and he married a Scheduled Caste woman. His wife is working as a Recorder in the office of Director of Marketing which is located on the Tank Bund, Hyderabad. According to Government Memo No.1992 public (services) dated 21-10-1937, married couple both of whom are in Government Service shall generally be posted to the same Station. The Government Memo also directed that when a request is made for transfer to the station where the other is employed, it should be allowed. The applicant states that by an order dated 31-8-89, Respondents 1 and 2 transferred the applicant to Gunegal Research Farm, Ibrahimpatnam. No one has been posted in his place in Hayathnagar. No post of messenger is required at

contd ... 2

Gunegal Farm. The transfer is only to harass him as he belongs to a Scheduled Caste Community. He further contends that Respondent 3 had issued proceedings on 10-10-1980 to the effect that Group C and D employees will not be transferred to outside stations as far as possible. The transfer order is in violation of these instructions. He also states that the transfer order has been issued during the middle of the academic year. He further states that the Respondents have not paid the salary for the month of August but issued order of transfer without paying the salary. He also states that he has been on leave from 1-9-1989.

3. The Respondents in their counter say that according to the terms and conditions of the appointment of the applicant he is liable to serve in any institute and/or office of ICAR. The Government order referred to by the applicant applies to the employees of the State Government and not to the employees of ICAR, which follows the instructions issued by the Government of India. The order of transfer has been made as part of routine transfers issued in the exigencies of service. The allegation that there is no office at Gunegal is baseless. The services of the applicant are required at Gunegal Research Farm. No extraneous considerations are involved in the transfer. As regards the instructions dated 10-10-1980 it was issued keeping in view the Central Joint Staff Council's recommendations. It states that the transfer of Group C and D Staff are to be avoided to outside stations as far as possible except in exigencies of service. In this case it is made as a part of general transfers. All the employees who were transferred along with the applicant have joined at their respective places of posting.

4. In regard to non-payment of salary, it is stated that the applicant was on unauthorised absence from 8-8-1989 to

10-8-1989, 18-8-1989 and from 24-8-1989 to 26-8-1989. He had been asked to explain reasons for his absence. The applicant has so far not submitted his explanation. The leave application of the applicant from 1-9-1989 was received only on 11-9-1989. The applicant has obviously gone on medical leave only to circumvent his transfer order. He has submitted the leave application after expiry of the period of leave he had asked for. He has not joined duty even after 11-9-1989 and he has been separately advised to report duty at Gunegal Farm failing which appropriate action will be taken against him.

5. We have heard Shri K.Nageshwara Reddy, learned counsel for the applicant and Shri N.Bhasker Rao, learned standing counsel for the department.

6. Shri K.Nageshwara Reddy while reiterating the points urged in the application, states that as per the office Memo issued by the Government of India, in Memo No. 28034/7/86/Estt-A dated 3-4-1986 the department is required to keep the husband and wife at the same place. He also relied upon the decision of the Ernakulam Bench in M.Yoosuf V/S Regional Director, Meteorological Center Madras.

7. Shri Bhasker Rao states that there was need to post a messenger to Gunegal Research Farm and the applicant has been transferred as part of general transfer orders, transferring several employees. This order was issued in the normal course. The Government of India Memo states that where one spouse is employed under Central Government and the other spouse is employed under the State Government the spouse employed under the Central Government may apply to the competent authority who may post the said officer to that station. The applicant has all along been working at the same place. It is open to the applicant to seek for transfer to Hayathnagar after working at the new station or the wife of the employee may also approach the State

Government for a transfer to the place where the husband is posted. The applicant has without making any representation in this regard, has filed the case.

8. We have considered these arguments. It is well settled that transfer is an incidence of service and not a condition of service. No Government servant is entitled to be retained at a particular place. The Government has the authority and power to transfer an employee in the exigencies of the administration. Any order of transfer must be in public interest and in the exigencies of service on administrative grounds. From the facts of the case narrated above, it is seen the transfer has been made in the normal course. There is no material for accepting the contention of the applicant that there is no need for a messenger at Gunegal Reaserach Farm. The applicant has also been avoiding the transfer order. The applicant has been working in Hayathnagar for a long time. It cannot be said that the transfer is mala-fide or in colourable exercise of power. The Supreme Court in Gujarat Electricity Board V/S Atmaram (AIR 1989 S.C.1433) observed that :-

"Transfer of a Government servant appointed to a particular cadre of transferable post from one place to the other is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground or having made a representation, or on the ground of

To

1. The Director,
Central Research Institute for Dry Land
Agriculture(I.R.I.D.A.) Santhoshnagar,
Saidabad Post, Hyderabad
2. The Senior Administrative Officer,
Central Research Institute for Dry Land
Agriculture, Santhoshnagar, Saidabad Post,
Hyderabad.
3. The Director General I.C.A.R.,
Krishi Bhavan, New Delhi.
4. One copy to Mr.K.Nageswara Reddy, Advocate,
H.No.198/2RT, Vijayanagar colony,
Hyderabad-500 457.
5. One copy to Mr.N.Bhaskara Rao, Addl.CGSC,CAT,
Hyderabad.
6. One spare copy.

ghm/

his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with order of his transfer from one place to the other."

Having regard to the facts of the case and applying the decision of the Supreme Court, we see no merit in the case, and has to be dismissed.

9. In regard to the contention of the learned counsel for the applicant that he is entitled to be retained in Hayathnagar as otherwise he would be separated from his wife, as rightly urged by the learned standing counsel, the applicant can make a representation to the respondent which would be considered by the respondents keeping in view the guidelines issued by the Government of India. The applicant has not made any representation to the authority in this matter before the filing of this application.

10. In the circumstances, the application is dismissed.
No order as to costs.

B.N. Jayasimha
(B.N. JAYASIMHA)
Vice-Chirman

J. Narasimha Murthy
(J. NARASIMHA MURTHY)
Member (JUDL)

Date. 27th October 1989

VCR.

T. Venk
31/10/89
Deputy Registrar (A)

5th 10/89
31/10/89